

1 THE HONORABLE BENJAMIN H. SETTLE
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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 HP TUNERS, LLC, a Nevada limited
9 liability company,

10 Plaintiff,

11 v.

12 KEVIN SYKES-BONNETT, SYKED ECU
13 TUNING INCORPORATED, a Washington
corporation, and JOHN MARTINSON

Defendants.

14 Cause No. 3:17-cv-05760 BHS

15 **DEFENDANTS' MOTION TO
16 IMPOSE SANCTIONS FOR
17 BREACH OF PROTECTIVE
18 ORDER**

19 **Note On Motion Calendar:**

20 **March 6, 2020**

21 Defendants, pursuant to Rule 37(b)(c) Fed.R.Civ.P. and the court's inherent power,
22 hereby move for an order imposing sanctions on Plaintiff HP Tuners, LLC for its blatant
23 violation of the express terms stated in, and imposed under, this court's Protective Order
24 dated May 21, 2018 (Dkt. # 39). In support of this motion, Defendants state as follows:

25 1. On May 21, 2018, this court signed and issued a Protective Order (copy
26 attached as Exhibit A) setting out in detail how "Confidential" and "Highly Confidential"
information produced by the parties is to be used and protected during the course of this
litigation.

27 2. Paragraph 4.1 of the Protective Order plainly states that, "A receiving party
28 may use confidential material that is disclosed or produced by another party or by a non-party
in connection with this case *only* for prosecuting, defending, or attempting to settle *this*
litigation." (Emphasis supplied.) Nothing in the Protective Order permits or otherwise

1 authorizes the use of confidential information for purposes *other* than for “prosecuting,
 2 defending, or attempting to settle *this* litigation.”

3 3. Plaintiff HP Tuners has blatantly violated the express terms of the Protective
 4 Order by filing Defendant Kevin Sykes-Bonnett's confidential deposition testimony
 5 documents in a *separate* lawsuit HP Tuners is maintaining against a *different defendant* in a
 6 *different court*. Nothing in the Protective Order permits HP Tuners to use Defendant Kevin
 7 Sykes-Bonnett's confidential documents and information in a case other than this one, and
 8 nothing in the Protective Order permits HP Tuners to file copies of Mr. Sykes-Bonnett's
 9 confidential deposition testimony and documents in another court.

10 4. In addition to being the plaintiff in this action, HP Tuners is also the plaintiff in
 11 a completely separate and distinct action it filed on November 1, 2018 in the District Court for
 12 the District of Nevada at Las Vegas captioned, *HP Tuners, LLC v. Kenneth Cannata*, Case
 13 No. 3:18-cv-00527-LRH-WGC. None of the Defendants in the case before this court (i.e.
 14 Tacoma) is a party in the Nevada litigation, none of the Defendants in this case has appeared
 15 in the Nevada litigation and neither the Defendants here, nor their counsel, have participated
 16 in any capacity in the Nevada litigation. The cases are wholly separate.

17 5. Despite the fact that the Defendants here are not parties to the Nevada
 18 litigation, HP Tuners, on June 19, 2019 filed a motion¹ in the Nevada litigation that contained
 19 Defendant Kevin Sykes-Bonnett's confidential deposition testimony and confidential
 20 documents. In particular, in its June 19, 2019 motion filed in Nevada, HP Tuners filed, under
 21 seal², copies of four confidential documents that were produced by Mr. Sykes-Bonnett
 22 pursuant to the Protective Order in this case and marked as Exhibits 85, 87, 88, and 89 in the
 23 deposition of Mr. Sykes-Bonnett taken May 16, 2019 in connection with *this* case.

24 6. In its June 19, 2019 “Motion To Seal Exhibit A To Supplemental Brief In
 25 Further Opposition To Defendant's Motion To Dismiss” HP Tuners filed in the Nevada

26 1 Docket Nos. 31 and 33 in the Nevada litigation, Case No. 3:18-cv-00527.

27 2 By filing these materials under seal, HP Tuners clearly knew of, and recognized, their confidential
 28 nature.

1 Litigation (copy attached as Exhibit B), HP Tuners expressly states that the documents it has
 2 filed in the Nevada litigation “are excerpts from the *confidential deposition testimony of*
 3 *Kevin Sykes-Bonnett* (“Sykes-Bonnett Deposition Testimony”), which was *taken in*
 4 *connection with discovery in another pending action*. Under LR IA 10-5, *the Sykes-Bonnett*
 5 *Deposition Testimony has been designated as Confidential.*” (Emphasis supplied.) There can
 6 be no question that HP Tuners was aware that the deposition testimony and exhibits related
 7 thereto were both (1) “confidential” and (2) produced in *different* litigation involving *different*
 8 defendants. In so doing HP Tuners clearly and blatantly defied the terms of this court’s
 9 Protective Order that clearly states that confidential information produced in this litigation is
 10 to be used *only* in this litigation, not in different litigation pending between different parties in
 11 a different court.

12 7. HP Tuners has displayed a continuing pattern of ignoring the legitimate bounds
 13 of discovery and has now gone so far as to blatantly defy the express terms of the Protective
 14 Order issued by this court in connection with this case. Unless sanctioned and warned that the
 15 orders of this court are to be taken seriously and respected as written, Defendants fear that this
 16 pattern will continue unchecked.

17 For all the foregoing reasons, Defendants respectfully request that Plaintiff HP Tuners
 18 be sanctioned for knowing breach of this court’s Protective Order and that it be warned that
 19 further abuse of the discovery process will result in further sanctions.

20 Dated February 20, 2020.

21 Respectfully submitted,

22 /s/ Philip P. Mann

23 Philip P. Mann, WSBA No: 28860

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29 Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify on the date indicated below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties who have appeared in this matter.

DATED: February 20, 2020. /s/ Philip P. Mann

/s/ Philip P. Mann